

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

**DARRELL KIMBROUGH, MSN, FNP-C,
MARY BENARD, MSN, FNP-C and
TINA SPOHN-LEDFORD, MSN, FNP-C,** §
§
§
§

Plaintiffs, §
§
§
§

vs. §
§
§
§

CIVIL NO. 2:18-CV-00082-D

**NAEEM KHAN, M.D. and
AMARILLO URGENT CARE, LLC,** §
§
§
§

Defendants. §
§
§
§

PLAINTIFFS' SECOND AMENDED RULE 26(A)(3) PRETRIAL DISCLOSURES

Pursuant to Rule 26(a)(3) of the Federal Rules of Civil Procedure and the Court's Scheduling Order entered August 20, 2021 (Doc. 122), Plaintiffs Darrell Kimbrough, Mary Benard, and Tina Spohn-Ledford hereby make the following disclosures:

I. RULE 26(A)(3)(A)(i): IDENTIFICATION OF WITNESSES

A. Witnesses Plaintiffs Expect to Present

Plaintiffs expect to call the following witnesses at trial:

1. Darrell Kimbrough
2. Mary Benard
3. Tina Spohn-Ledford
4. Naeem Khan, MD
5. Criselda Rico

B. Witnesses Plaintiffs May Call if the Need Arises

Plaintiffs may call the following witnesses at trial:

1. Vicki Ellington
2. Melissa Chavez

3. Christy Kimbrough
4. Bryan Owens, Defendants' former counsel
5. Jeremi Young, Defendants' former counsel
6. Casey Erick, Defendants' current counsel
7. Shawn Twing, attorney fees
8. Any and all witnesses identified by Defendants.
9. Any and all witnesses called by Defendants.
10. Any impeachment and rebuttal witnesses as necessary.
11. Any custodian of records necessary to authenticate documents, including but not limited to Matthew Logan and Chris Jensen.

II. RULE 26(A)(3)(A)(ii): DEPOSITION DESIGNATIONS

Plaintiffs do not anticipate calling any witness at trial via deposition; however, if Criselda (Cris) Rico is unavailable to appear and testify at trial, the following are Plaintiffs' designations from Ms. Rico's deposition:

1. Oral Deposition of Criselda Rico:

Page 1:7-8

Page 8:13-25

Page 10:1-25

Page 11:1-13:11

Page 13:19-15:16

Page 16:5-15

Page 171:1-17

Page 18:1-25

Page 19:2-6

Page 19:22-23:21

Page 25:11-25

Page 27:12-32:2

Page 32:6-25

Page 36:14-16

Page 37:21-39:25

Page 42:9-45:6

Page 45:8-47:9

Page 48:14-50:4

Page 59:13-61:9

Page 62:11-25

Page 63:9-66:11

Plaintiffs reserve the right to further designate depositions if a witness listed becomes unavailable.

III. RULE 26(A)(3)(A)(iii): IDENTIFICATION OF EXHIBITS

Plaintiffs expect to offer or utilize the exhibits and/or documents identified in the accompanying Exhibit 1.

Dated: January 26, 2021

Respectfully submitted,

MULLIN HOARD & BROWN, LLP
Shawn D. Twing
Texas SBN: 00798008
Oklahoma SBN: 015865
Arkansas SBN: 93089
stwing@mhba.com
500 S. Taylor, Suite 800
P.O. Box 31656
Amarillo, Texas 79120-1656
(806) 372-5050
(806) 372-5086 – facsimile

Elizabeth A. Chermel
Texas SBN 24064027
bchermel@mhba.com
2515 McKinney Avenue, Suite 900
Dallas, Texas 75201
(214) 754-0040
(214)754-0043 – facsimile

/s/ Elizabeth A. Chermel

Elizabeth A. Chermel

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the following counsel of record, via the court's ECF electronic filing system on January 26, 2021:

Casey S. Erick
cerick@cowlesthompson.com
COWLES & THOMPSON
901 Main St, Suite 3900
Dallas, TX 75202

/s/ Elizabeth A. Chermel

Trial Exhibit	Doc Date	Description	Beg Bates	Ending Bates	Deposition Exhibit Cross Reference
1		Amarillo Urgent Care and Dr. Khan Employee Handbook	D*000830	D*000842	Khan Ex 3; Rico Ex 2
2		October 2017 - June 2018 calendars with providers scheduled	D*000205	D*000213	
3		Calendars with providers scheduled (various months)	P-000001	P-000014	
4	9/29/2016	Darrell Kimbrough Employment Agreement	D*000235	D*000236	Khan Ex 6; Kimbrough Ex 1 (DK-000002-3)
5	10/6/2016	Darrell Kimbrough 2016 W-4	D*000494	D*000494	
6		Darrell Kimbrough 2017 and 2018 W-2	DK-000019	DK-000019	
7		Darrell Kimbrough Payroll Register	D*00077	D*00077	
8		Darrell Kimbrough Detailed Payroll History	D*00078	D*000106	Khan Ex 11 (partial)
9		Darrell Kimbrough Pay Stubs	D*000108	D*000133	Khan Ex 11 (partial)
10	11/5/2017	Darrell Kimbrough IP address log-in listing for Darrell Kimbrough	D*000134	D*000135	Kimbrough Ex 2
11	11/5/2017	Darrell Kimbrough IP address log-in listing and working hours summary	D*000134	D*000136	Khan Ex 17; Kimbrough Ex 2 (partial)
12		Darrell Kimbrough Home Charting Estimates	DK-000001	DK-000001	Kimbrough Ex 7
13	1/25/2018	Handwritten cover note re: Concentra Letter	D*000216	D*000216	
14	1/25/2018	Authorization and Release of Information to Designated Contacts from Darrell Kimbrough	D*000217	D*000217	Khan Ex 19; Kimbrough Ex 6A
15	1/29/2018	Screenshot of text message exchange between Cris Rico/Khan Naeem and Darrell Kimbrough	D*000218	D*000219	
16	5/10/2018	E-mail to C. Rico from Lauren Williams, PayPro Payroll Specialist, re: Darrell Kimbrough and overtime owed	D*000222	D*000222	Khan Ex 7 (partial)
17	5/10/2018	Email from Lauren Williams, Payroll Specialist with Propay, to Cris Rico re: Darrell Kimbrough and calculating overtime owed	D*000492	D*000492	
18	5/10/2018	Email from Lauren Williams, Payroll Specialist with Propay, to Cris Rico re: Darrell Kimbrough and calculating overtime owed	D*000510	D*000510	
19	3/8/2018	3/8/2018 Letter from M. Warner to Concentra re: Darrell Kimbrough	D*0896	D*0897	Khan Ex 20 (partial)
20	3/12/2018	3/12/18 Letter from M. Warner to Concentra sending employment agreement between Naeem Khan/Amarillo Urgent Care and Darrell Kimbrough	D*0898	D*0900	Khan Ex 20 (partial)
21		Screenshots of text messages between Darrell Kimbrough and Cris Rico (1/29/2018-4/18/2018)	DK-000004	DK-000015	Rico Ex 12
22	1/5/2018	Concentra offer letter to Darrell Kimbrough	DK-000016	DK-000018	Kimbrough Ex 6
23	2/1/2017	Tina Spohn-Ledford Employment Agreement (w/handwritten note)	D*000237	D*000238	Khan Ex 4; Rico Ex 3
24	2/1/2018	Tina Spohn-Ledford Employment Agreement (w/handwritten notes; unexecuted)	D*000651	D*000653	
25	12/8/2017	Tina Spohn-Ledford Request Off Form	D*000820	D*000820	
26	10/13/2016	Tina Spohn-Ledford 2016 W-4	D*000654	D*000654	
27		Tina Spohn-Ledford 2016 W-2	TSL-000083	TSL-000083	
28		Tina Spohn-Ledford 2017 W-2	TSL-000084	TSL-000084	
29		Tina Spohn-Ledford 2018 W-2	TSL-000085	TSL-000085	
30		Tina Spohn-Ledford Payroll History	D*000138	D*000141	Khan Ex 9 (partial)
31		Tina Spohn-Ledford Payroll Register	D*000142	D*000155	Khan Ex 9 (partial)
32		Tina Spohn-Ledford Detailed Payroll History	D*000156	D*000198	Khan Ex 9 (partial)
33		Tina Spohn-Ledford Detailed Payroll History	D*1025	D*1034	
34		Tina Spohn-Ledford Home Charting Estimates	TSL-000047	TSL-000050	Spohn-Ledford Ex 3
35		Tina Spohn-Ledford IP address log-in listing with handwritten cover page	D*000199	D*000204	Spohn-Ledford Ex 6
36		Tina Spohn-Ledford IP address log-in listing	D*000200	D*000204	Khan Ex 12
37		Audit View Report for Tina Spohn-Ledford EMR Logins - 4/2/2018-6/21/2018	D*1001	D*1021	
38	undated	Letter from Melissa Chavez re: Tina Spohn-Ledford and provider charting	D*000215	D*000215	Khan Ex 16; Rico Ex 10
39	3/15/2018	Check image: for payment to Tina Spohn-Ledford re: charts	D*000877	D*000877	Khan Ex 15; Spohn-Ledford Ex 8
40	3/22/2018	Handwritten notes re: Tina Spohn-Ledford hourly payrate	D*000555	D*000555	
41		Record of hours worked for Tina Spohn-Ledford from 9/28/2016 to 8/14/2017	D*000571	D*000571	Khan Ex 22
42	3/26/2018	Meeting notes re: Melissa Meeting with Tina	D*000642	D*000642	
43	3/24/2018	Screenshots of text messages between Tina Spohn-Ledford and Dr. Khan	TSL-000052	TSL-000054	
44	3/27/2018	Screenshots of text messages between Tina Spohn-Ledford and Cris Rico	TSL-000055	TSL-000071	
45	5/10/2018	E-mail to C. Rico from Lauren Williams, PayPro Payroll Specialist, re: Tina Spohn-Ledford and overtime owed	D*000223	D*000223	Khan Ex 7 (partial)
46	5/10/2018	E-mail to Cris Rico from Lauren Williams, PayPro Payroll Specialist, Pro Pay re: Tina Spohn-Ledford (and overtime owed)	D*000655	D*000655	
47		Overseeing Monthly Face to Face Meetings-Tina Spohn-Ledford	D*000682	D*000703	Rico Ex 7
48	6/1/2016	Mary Benard Employment Agreement	D*000224	D*000225	Benard Ex 1 (MB-000054-55)
49	9/18/2017	Mary Benard Employment Agreement	D*000226	D*000227	Benard Ex 2 (MB-000056-57)
50	4/1/2018	Mary Benard Employment Agreement	D*000228	D*000229	Rico Ex 4; Khan Ex 5; Benard Ex 3 (MB-000059-61)
51	4/2/2018	Mary Benard Employment Agreement	D*000230	D*000234	

52	4/1/2016	Mary Benard 2016 W-4	D*000247	D*000248	
53		Mary Benard 2017 and 2018 W-2	MB-000070	MB-000071	
54		Payroll time sheet summary page	D*0001	D*0001	
55		Mary Benard Payroll History	D*0002	D*0005	
56		Mary Benard Payroll Register	D*0006	D*00018	
57		Detailed Payroll History for Benard	D*00019	D*00077	Khan Ex 10
58		Mary Benard Request Off Forms - February, March, April, July	D*000390	D*000393	
59		Mary B. Days Request - September, December	D*000418	D*000418	
60		Handwritten notes regarding vacation hours	D*000870	D*000870	
61	4/1/2016	Overseeing Monthly Face to Face Meetings-Mary Benard	D*000394	D*000417	Rico Ex 6
62	6/1/2016	Overseeing Monthly Face to Face Meetings	D*000416	D*000416	Khan Ex 8; Rico Ex 5
63	4/2/2018	Reference letter for Dr. Khan from Mary Benard	D*000443	D*000443	Khan Ex 14; Rico Ex 13
64	4/16/2018	Meeting Minutes , Dr. Khan, Rico and Benard re: overtime and chartng	D*000214	D*000214	Khan Ex 21; Rico Ex 15
65	6/9/2018	Mary Benard letter of resignation w/handwritten notes	D*000859	D*000859	Khan Ex 28; Rico Ex 9
66		Mary Benard Home Charting Estimates	MB-000046	MB-000049	Benard Ex 4
67	3/23/2018	Charting Tallies - Mary Benard (106 total)	D*000860	D*000860	
68	3/31/2018	Charting Tallies - Mary Benard (89 total)	D*000861	D*000861	
69	4/17/2018	Mary Chart	D*000862	D*000862	
70	1/19/2018	Charting Records (redacted)	D*000863	D*000865	
71	3/29/2018	Marys Tally sheet (89 total)	D*000867	D*000867	
72	3/15/2018	Mary - Homechart - Mary Benard	D*000868	D*000869	
73	5/1/2018	Charts for old arrears - Mary (133 charts)	D*000872	D*000872	
74	3/31/2018	Mary Benard Charting Tallies (106 total)	D*000873	D*000873	
75	4/14/2018	Charts for Mary B	D*000879	D*000879	
76	2/15/2018	Payment Record for check to Mary Benard re: "back pay from 9/21/2017"	D*000369	D*000369	
77	3/15/2018	Receipts of payments to Mary Benard for "gifts for charting" and "charting"	MB-000050	MB-000053	Benard Ex 5
78	4/2/2018	Amarillo Urgent Care Check Images to Mary Benard (3/15/2018; 4/2/2018)	D*000875	D*000875	
79	5/22/2018	Amarillo Urgent Care Checks to Mary Benard (5/22/2018, 4/17/2018, 2/15/2018, various)	D*000871; D*000876; D*000878; D*000880	D*000871; D*000876; D*000878; D*000880	Khan Ex 13; Rico Ex 8
80	5/22/2018	Amarillo Urgent Care Check Image to Mary Benard (5/22/2018)	D*000874	D*000874	
81	6/26/2008	Screenshot of text exchange from Cris Rico to Mary Benard terminating Benard 6/26/2018	MB-000063	MB-000063	Rico Ex 14; Benard Ex 6
82	6/23/2018	Screenshots of text exchanges between Cris Rico and Mary Benard (June 2018)	MB-000064	MB-000068	Benard Ex 7 (partial)
83	6/26/2018	Screenshot of text exchanges between Dr. Khan and Mary Benard (6/26/2018)	MB-000069	MB-000069	Benard Ex 7 (partial)
84	5/3/2018	Screenshots of text exchanges between Dr. Khan and Mary Benard (5/3/2018-6/26/2018)	D*0965	D*0969	Khan Ex 27; 30b6 Ex 1 (Khan)
85		Letter/memo from Samantha Huerta re charting	D*000894	D*000895	Khan Ex 18; Rico Ex 11
86	5/28/2019	Letter from Jeremi Young with D1000 spreadsheet			
87		Combined report Mary-Tina-Darell Feb 2017-Feb 2018 - Electronic Medical Record Login Records for providers from Practice Velocity (produced by Defendants)	D*1000	D*1000	
88		Electronic Medical Record Login Records for providers from DocuTap	DT_01	DT_29	
89		Electronic Medical Record Login Records for providers from Practice Velocity	PV_001	PV_001	
90		Electronic Medical Record Login Records for providers from Practice Velocity	PV_002	PV_002	
91		Electronic Medical Record Login Records for providers from Practice Velocity	PV_003	PV_003	
92		Electronic Medical Record Login Records for providers from Practice Velocity	PV_004	PV_004	
93	7/30/2007	Certificate of Amendment-BestCare Walking Clinic to Amarillo Urgent Care, LLC			Khan Ex 2
94	6/26/2018	Service of Summons on AUC			30b6 Ex 2
95	6/26/2018	Service of Summons on Dr. Kahn			30b6 Ex 3
96	2/15/2019	Defendants' Combined Objections and Answers to Plaintiffs' First Set Of Interrogatories			
		NEW			
97	1/26/2021	Updated Wage-Hour Calculations-Kimbrough	DK-000020-REV	DK-000026-REV	
98	1/26/2021	Updated Wage-Hour Calculations-Benard	MB-000072-REV	MB-000082-REV	
99	1/26/2021	Updated Wage-Hour Calculations-Spohn-Ledford	TSL-000086-REV	TSL-000091-REV	
100		Electronic Medical Record Login Records for providers from Practice Velocity	PV_005	PV_005	
101		Electronic Medical Record Login Records for providers from Practice Velocity	PV_006	PV_006	

102		Electronic Medical Record Login Records for providers from Practice Velocity	PV_007	PV_007	
103		Electronic Medical Record Login Records for providers from Practice Velocity	PV_008	PV_008	
104		Electronic Medical Record Login Records for providers from Practice Velocity	PV_009	PV_009	
105		Electronic Medical Record Login Records for providers from Practice Velocity	PV_010	PV_010	
106		Electronic Medical Record Login Records for providers from Practice Velocity	PV_011	PV_011	
107	3/20/2020	Affidavit Of Chase Jensen			
108	3/20/2020	Affidavit Of Matthew Logan			
109	6/4/2019	Subpoena to DocuTAP			
110	6/4/2019	Subpoena to Practice Velocity			
111	3/20/2020	Defendants' First Amended Answers to Plaintiffs' Second Interrogatories			
112	3/20/2020	Defendants' First Supplemental Responses to Plaintiffs Second Request for Production			
113	2/21/2020	Defendants' Responses to Plaintiffs Second Interrogatories			
114	2/21/2020	Defendants' Responses to Plaintiffs Second Request for Production			
115	2/21/2020	Cause No. 109546-E-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Mary Benard, MSN, FNP-C, in the 108th Judicial District Court, Potter County, Texas.			
116	2/21/2020	Cause No. 109545-B-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Darrell Kimbrough, MSN, FNP-C, in the 181st Judicial District Court, Potter County Texas			
117	2/21/2020	Cause No. 109547-B-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Tina Spohn-Ledford, MSN, FNP-C, in the 108th Judicial District Court, Potter County Texas			
118	4/3/2020	Affidavit of Service of Kimbrough in Cause No. 109545-B-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Darrell Kimbrough, MSN, FNP-C, in the 181st Judicial District Court, Potter County Texas			
119	4/3/2020	Affidavit of Service of Spohn-Ledford in Cause No. 109547-B-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Tina Spohn-Ledford, MSN, FNP-C, in the 108th Judicial District Court, Potter County Texas			
120	4/13/2020	Affidavit of Service of Benard in Cause No. 109546-E-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Mary Benard, MSN, FNP-C, in the 108th Judicial District Court, Potter County, Texas.			
121	6/18/2020	Plaintiffs' Second Requests to Defendant for Written Discovery in Cause No. 109546-E-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Mary Benard, MSN, FNP-C, in the 108th Judicial District Court, Potter County, Texas.			
122	6/18/2020	Plaintiffs' Second Requests to Defendant for Written Discovery in Cause No. 109545-B-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Darrell Kimbrough, MSN, FNP-C, in the 181st Judicial District Court, Potter County Texas			
123	6/18/2020	Plaintiffs' Second Requests to Defendant for Written Discovery in Cause No. 109547-B-CV, Naeem Khan, MD and Amarillo Urgent Care, LLC v. Tina Spohn-Ledford, MSN, FNP-C, in the 108th Judicial District Court, Potter County Texas			
124	3/3/2020	Email string between B. Bones and E. Casey regarding service of State Court Lawsuits			